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SU: FUND STATE CONTRACT FOR PLANNED REMOVAL AT
CALUMET CONTAINER SITE BETWEEN THE STATES OF ILLINOIS AND
INDIANA AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY

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A. Authority

- X This Contract is entered into pursuant to sections 104(a)(1), (c)(1) and (d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq.

B. Purpose

The purpose of this Contract is to delineate the responsibilities of the parties (1) to provide for the removal and proper disposal of hazardous substances at the Calumet Container site located in Hammond, Lake County, Indiana, an uncontrolled hazardous waste site (the site) and (2) to provide the assurances required by CERCLA. Attached as Appendix A and incorporated herein is a Statement of Work (SOW) to be performed by the contractor selected for the cleanup.

C. Parties

1. This Contract is between the U.S. Environmental Protection Agency (EPA), the State of Indiana, and the Illinois Environmental Protection Agency (IEPA). By signing this Contract, each State's Attorney General certifies that the Agency entering into this contract on behalf of the State has the legal authority to do so and to fulfill the terms of this Contract.
2. EPA designates Paul Bitter to serve as Federal On Scene Coordinator (OSC) for this Contract. His office is at 230 South Dearborn Street, Chicago, Illinois 60604. His telephone number is (312) 886-3007.
3. The Indiana State Board of Health designates Chris Oppy, Land Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206, as State Project Coordinator (SPC) for this Contract. His telephone number is (317) 633-0207.

D. EPA Responsibilities

1. EPA shall provide ninety (90) percent of the total costs of the work performed under this Contract and furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under this Contract.
2. EPA will provide the OSC who is responsible for directing and managing the overall project.
3. EPA will provide the technical, logistical, and public relations support, incident to the implementation of the SOW, for management of the cleanup, as needed and requested by the OSC.

4. EPA will consult with the State of Indiana on matters relating to the implementation of the project.

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E. State Responsibilities

1. The State of Illinois will contribute on behalf of both the State of Illinois and the State of Indiana the ten (10) percent State share of the cost of the actions described in this Contract. As discussed infra in section G., the State of Illinois will not make a cash payment but will rely on credits pursuant to section 104(c)(3) of CERCLA, 42 U.S.C. 9604. To the extent the State of Illinois' verified credits are insufficient to meet the ten percent share, the State of Indiana will pay the remaining amount as discussed infra in section G.
2. The State of Indiana's 10 percent cost-share, if any, for the project may be met in whole or in part by the State's contribution of services, materials or equipment (hereinafter "services") to the project.
3. The State of Indiana may, at its discretion, undertake activities at the site in addition to those specified in this Contract, subject to the following conditions:
 - a. any activity the State proposes to undertake must be approved, in advance, by the OSC;
 - b. the SPC will supervise State personnel whenever they are working on the site and will ensure that such personnel comply with the site safety plan;
 - c. the SPC will monitor the costs incurred by the State and provide the necessary documentation of those costs on EPA Form 1900-55 to the OSC on a working day basis; the value of the services provided by the State shall be determined in accordance with 41 CFR 1-15.7 (contract cost principles and procedures for grants and contracts with State and local governments); and
 - d. the SPC will provide to the OSC a tabulation of the costs for all State services within 30 days of completion of the work incident to this Contract.
4. Both the State of Illinois and the State of Indiana will assist EPA in obtaining any permits that are necessary to satisfactorily complete the planned removal activities.

F. Immediate Removal Action

Any immediate removal activities conducted pursuant to the National Contingency Plan (NCP), 40 C.F.R. Part 300.65, shall not be restricted by the terms of this Contract. The OSC in consultation with the States can suspend, if necessary, the removal activities in the SOW for this Contract during any immediate removal action.

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G. Payments

1. EPA shall contribute ninety (90) percent of the total project costs and the States shall contribute ten (10) percent of the total project costs. The States' share of the cost of the actions indicated in the SOW shall not be increased if EPA is required to indemnify a settling party or parties. The total cost of this planned removal action shall not exceed \$360,000, of which EPA will contribute 90 percent, the State of Illinois will contribute \$11,842 in statutory credit pursuant to section 104(c)(3) of CERCLA, and the State of Indiana will contribute the remaining cost-share, up to \$25,000.
2. The total project cost shall be all costs incurred by EPA, and the State of Indiana as specifically authorized in Paragraph E, above, and shall be comprised of the value of services, materials and equipment provided by the State of Indiana and EPA including, but not limited to, contractors' services, materials and equipment. The value of services provided by EPA and the State of Indiana shall include both direct and indirect costs. Both EPA and the State of Indiana shall compile and maintain accurate and detailed documentation of all costs (on-site and off-site) which they may wish to count towards their respective cost-shares.
3. Upon completion of the actions described in this Contract, the final costs will be determined and any payment by the State of Indiana to EPA, up to a limit of \$25,000, will be made within thirty (30) days of receipt by the State of such final determination.
4. Any payments shall be made payable to EPA and sent to:

EPA
Accounting Operations
P.O. Box 2971
Washington, D.C. 20013
Attn: Collection Officer for Superfund
Kevin Brittingham, PM-226
Room 3419M

H. Off-site Storage, Destruction, Treatment or Disposition

The State of Indiana will be responsible for identifying authorized hazardous waste disposal facilities that have adequate capacity, and capability for accepting hazardous substances designated for off-site storage, treatment, and disposal and for assuring that the disposal site selected by the apparent low responsible bidder is acceptable to EPA and authorized to accept the hazardous substances. Said facilities must comply with either the requirements of Sub-title C of the Resource Conservation and Recovery Act (RCRA) or with the requirements of a State program authorized pursuant to Subtitle C of RCRA and need not be located within the State's borders.

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I. Operation and Maintenance

No future operation and maintenance is anticipated for the planned removal actions provided pursuant to this Contract. If at any time, such operation and maintenance is deemed necessary by the OSC, appropriate amendments to this contract will be made pursuant to section R.

J. Personnel Safety

EPA agrees to assist and oversee the implementation of the site safety plan pursuant to the SOW.

K. Access to the Site

EPA and the State of Indiana shall have the necessary access to the site to satisfactorily complete the response actions. If required, the States of Indiana and Illinois shall provide necessary access to EPA's employees, agents, contractors and subcontractors.

L. State Inspections

State Project Coordinators of both States shall have access to the site to review work in progress.

EPA shall not be responsible for any harm to any State representative or other person arising out of or resulting from any act or omission by the State in the course of a site inspection nor shall the States be responsible for any harm to any EPA representatives or other person arising out of or resulting from any act or omission by the EPA in the course of a site inspection.

M. Information Regarding the Site

1. At EPA's request, the States shall make available in accordance with State law any information in their possession concerning the site. If said information was submitted to the State under a claim of confidentiality, said information will be treated in accordance with the provisions of 40 C.F.R. Part 2. Absent such a claim, EPA may make said information available to the public without further notice.
2. EPA agrees to share, as appropriate, with the States, information and reports developed as part of its responsibilities under this Contract. The States agree not to release any information or reports prepared pursuant to this Contract to the public unless approved by both EPA Regional Counsel and the SPCs.

N. Community Relations Plan

EPA shall develop and implement in consultation with the States an appropriate Community Relations Plan. The States will assist in coordinating the activities covered by the Plan with other State and local officials.

O. Third Parties

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1. This Contract is intended to benefit only the States and EPA. It extends no benefit or right to any third party not a signatory to this Contract.
2. EPA does not assume any liability to third persons with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. section 1346(b), 2671-2680. To the extent permitted by State law, the States do not assume liability to any third person with respect to losses due to bodily injury or property damages.

P. Enforcement and Cost Recovery

1. Disclaimer of Agency Relationship - Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and either or both of the States. Any standards, procedures or protocols prescribed in this Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by this Contract, and do not constitute a right to control the actions of a State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of a State in any matter relating to the subject matter of this Contract, and a State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter relating to the subject matter of this Contract.

Neither EPA nor the States shall be liable for the contracts, acts, errors or omissions of the agents, employees or contractors, of any other party entered into, committed or performed with respect to, or in the performance of, this Contract.

2. Notice of Intent to Settle or Initiate Proceedings - EPA and the States agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the "responsible party", whether one or more) for reimbursement of any services, materials, monies or other thing of value expended by EPA or the States for response activities at the site described in this Contract, neither EPA nor the States will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the other parties to this Contract not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. No party to this agreement shall attempt to negotiate for or collect reimbursement of any response activities costs on behalf of any other party, and authority to do so is hereby expressly negated and denied.

3. Cooperation and Coordination of Cost Recovery efforts - EPA and the States agree to cooperate and coordinate efforts to recover their respective costs of removal taken at the site described herein, including the negotiation of settlement and filing and management of any judicial actions against potentially responsible parties. This shall include coordination of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.
 4. Judicial Action - EPA and the States agree that judicial action taken by any party against a potentially responsible party for recovery of any sums expended in response actions at the site under this Contract shall be filed in either of the United States District Courts for the Northern District of Indiana, or in such other judicial district of the United States as may be authorized by section 113 of CERCLA, and agreed to in writing by EPA and either or both States.
- Q. Federal Enforcement Action - The States agree to cooperate with EPA and the U.S. Department of Justice so that legal actions against any of the responsible parties are coordinated in a manner that will result in the greatest recovery of the costs of the removal measures undertaken by both the States and EPA.
- R. Amendments
- Any changes to this Contract including changes in total costs must be agreed to in writing by all parties.
- S. Failure to Comply with Terms of Contract
1. If a State fails to comply with the terms of this Contract, EPA may proceed under the provisions of section 104(d)(2) of CERCLA against the noncomplying party.
 2. If EPA fails to comply with any requirements of this Contract, each State may, after providing 60 days notice, seek in the appropriate court of competent jurisdiction to enforce the Contract or to recover any funds advanced and any costs arising from or incurred because of the breach of contract by EPA.
- T. Termination of the Contract
- This Contract may be terminated if a) all parties enter into a termination agreement which establishes the effective date of termination of this Contract, the basis for settlement of termination costs and the amount and date of sums due any party; or b) this Contract is superceded by a contract or cooperative agreement which provides for additional response activities at the site.

In witness thereof, the parties hereto have executed this Contract in four copies each of which should be deemed original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Lee M. Thomas
Lee M. Thomas, Assistant Administrator
Office of Solid Waste and Emergency Response

8/16/83
Date

STATE OF INDIANA

Robert D. Orr
Robert D. Orr, Governor

1/4/84
Date

Linley E. Pearson
Approved as to legality and form,
Linley E. Pearson, Attorney General

12-30-83
Date

Orval D. Lundy
Orval D. Lundy, Commissioner

12-15-83
Date

Judith G. Palmer
Judith G. Palmer
Indiana Budget Agency

12-16-83
Date

Ralph C. Pickard
Ralph C. Pickard, Technical Secretary,
Environmental Management Board
Indiana State Board of Health

12-13-83
Date

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Richard J. Carlson
Richard J. Carlson
Director, Illinois Environmental
Protection Agency

9/12/83
Date

Neil F. Hartigan
Approved as to legality and form,
Neil F. Hartigan, Attorney General

10/12/83
Date

Background

The Calumet Container Corporation, a bankrupt drum recycling facility, is located in an urban park with 90 percent of the site in Indiana and 10 percent of the site in the State of Illinois. The site consists of hazardous and flammable waste materials being stored in various containers such as 55-gallon drums, pails, bulk storage tanks, open chemical waste traps, and trailer trucks. The contents of many containers have been emptied onto the ground, and the trailers are deteriorating and leaking. During heavy rains, contaminated runoff leaves the site.

Tasks

The contractor shall perform the following tasks:

- (a) Insure that workers and all personnel onsite wear adequate protective equipment as necessary. This may include self-contained breathing apparatus, overalls, gloves, and boots that withstand organic solvents; and dust-, organi-, and acid-protective full face spread respirators. The safety standards shall conform to OSHA regulations. The Contractor shall provide all necessary decontamination facilities for authorized personnel.
- (b) Determine background ambient air quality on the periphery of the facility for compounds specificity prior to and during all phases of cleanup. Monitor air quality during all phases of cleanup for total organic compounds and provide OSC with such data on a daily basis.
- (c) Segregate and sample all bulk storage containers, pails, and drums. Perform a representative chemical qualitative analysis to determine compatibility of materials. Drummed oily material shall be sampled and analyzed for PCB concentration prior to bulking.
- (d) Bulk compatible liquids. Perform a representative quantitative and qualitative analysis on bulked batches. Dispose of liquids by incineration or dispose of in a licensed hazardous waste landfill, or by an equally environmentally sound method such as recycling. The OSC must approve of disposal methods.
- (e) Perform chemical analysis on all excavated material. Dispose in a licensed hazardous waste landfill or by incineration. Provide a log of all chemical analyses and match the data with sample location/container.
- (f) Excavate soils in these areas visibly contaminated down to 1-foot depth, but no more than 1,000 cubic yards total.

Disposal of these soils in a licensed hazardous waste landfill or by incineration. Backfill excavated areas with clean earthen material and slope to existing contours to prevent ponding on site. (Removal of "soil" includes excavation and removal of some crushed buried drums.)

- (g) Containers, drums, pails, and tanks shall be salvaged or compacted for disposal and properly disposed of. 000362
- (h) Drums containing solids must be separated from drums containing liquids. Drums containing oily material shall be staged separately. The contractor must have Department of Transportation (DOT) approved salvage drums for replacement of any deteriorated drums when shipping wastes. Empty drums on the site that are secure and sealable can be used for transporting wastes from the site. Proper descriptions of drum contents must be provided on repackaged drums.
- (i) The contractor shall provide site security.
- (j) The "loading dock" shall be removed and disposed of.